

### § 63.23

media, of each portion of the application and any amendments, and each environmental impact statement and any supplements. DOE shall maintain the capability to generate additional copies for distribution in accordance with written instructions from the Director or the Director's designee.

(c) On notification of the appointment of an Atomic Safety and Licensing Board, DOE shall update the application, eliminating all superseded information, and supplement the environmental impact statement if necessary, and serve the updated application and environmental impact statement (as it may have been supplemented) as directed by the Board. Any subsequent amendments to the application or supplements to the environmental impact statement must be served in the same manner.

(d) When an application, and any amendment to it is filed, copies on paper and optical storage media must be made available in appropriate locations near the proposed geologic repository operations areas at the Yucca Mountain site for inspection by the public. These copies must be updated as amendments to the application are made. The environmental impact statement and any supplements to it must be made available in the same manner. An updated copy of the application, and the environmental impact statement and supplements, must be produced at any public hearing held by the Commission on the application for use by any party to the proceeding.

(e) DOE shall certify that the updated copies of the application, and the environmental impact statement as it may have been supplemented, as referred to in paragraphs (c) and (d) of this section, contain the current contents of these documents submitted as required by this part.

[66 FR 55792, Nov. 2, 2001, as amended at 68 FR 58815, Oct. 10, 2003]

### § 63.23 Elimination of repetition.

In its application or environmental impact statement, DOE may incorporate, by reference, information contained in previous applications, statements, or reports filed with the Commission, if the references are clear and specific and copies of the information

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incorporated are made available to the public locations near the site of the proposed geologic repository, as specified in § 63.22(d).

### § 63.24 Updating of application and environmental impact statement.

(a) The application must be as complete as possible in light of the information that is reasonably available at the time of docketing.

(b) DOE shall update its application in a timely manner so as to permit the Commission to review, before issuance of a license—

(1) Additional geologic, geophysical, geochemical, hydrologic, meteorologic, materials, design, and other data obtained during construction;

(2) Conformance of construction of structures, systems, and components with the design;

(3) Results of research programs carried out to confirm the adequacy of designs, conceptual models, parameter values, and estimates of performance of the geologic repository.

(4) Other information bearing on the Commission's issuance of a license that was not available at the time a construction authorization was issued.

(c) DOE shall supplement its environmental impact statement in a timely manner so as to take into account the environmental impacts of any substantial changes in its proposed actions or any significant new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts.

### CONSTRUCTION AUTHORIZATION

### § 63.31 Construction authorization.

On review and consideration of an application and environmental impact statement submitted under this part, the Commission may authorize construction of a geologic repository operations area at the Yucca Mountain site if it determines:

(a) *Safety.*

(1) That there is reasonable assurance that the types and amounts of radioactive materials described in the application can be received and possessed in a geologic repository operations

area of the design proposed without unreasonable risk to the health and safety of the public; and

(2) That there is reasonable expectation that the materials can be disposed of without unreasonable risk to the health and safety of the public.

(3) In arriving at these determinations, the Commission shall consider whether—

(i) DOE has described the proposed geologic repository as specified at § 63.21;

(ii) The site and design comply with the performance objectives and requirements contained in subpart E of this part;

(iii) DOE's quality assurance program complies with the requirements of subpart G of this part;

(iv) DOE's personnel training program complies with the criteria contained in subpart H of this part;

(v) DOE's emergency plan complies with the criteria contained in subpart I of this part; and

(vi) DOE's proposed operating procedures to protect health and to minimize danger to life or property are adequate.

(b) *Common defense and security.* That there is reasonable assurance that the activities proposed in the application will not be inimical to the common defense and security.

(c) *Environmental.* That, after weighing the environmental, economic, technical, and other benefits against environmental costs, and considering available alternatives, the action called for is the issuance of the construction authorization, with any appropriate conditions to protect environmental values.

#### § 63.32 Conditions of construction authorization.

(a) In a construction authorization for a geologic repository operations area at the Yucca Mountain site, the Commission shall include any conditions it considers necessary to protect the health and safety of the public, the common defense and security, or environmental values.

(b) The Commission shall incorporate provisions in the construction authorization requiring DOE to furnish periodic or special reports regarding:

(1) Progress of construction;

(2) Any data about the site, obtained during construction, that are not within the predicted limits on which the facility design was based;

(3) Any deficiencies, in design and construction, that, if uncorrected, could adversely affect safety at any future time; and

(4) Results of research and development programs being conducted to resolve safety questions.

(c) The construction authorization for a geologic repository operations area at the Yucca Mountain site will include restrictions on subsequent changes to the features of the geologic repository and the procedures authorized. The restrictions that may be imposed under this paragraph can include measures to prevent adverse effects on the geologic setting as well as measures related to the design and construction of the geologic repository operations area. These restrictions will fall into three categories of descending importance to public health and safety, as follows:

(1) Those features and procedures that may not be changed without—

(i) 60 days prior notice to the Commission;

(ii) 30 days notice of opportunity for a prior hearing; and

(iii) Prior Commission approval;

(2) Those features and procedures that may not be changed without—

(i) 60 days prior notice to the Commission; and

(ii) Prior Commission approval; and

(3) Those features and procedures that may not be changed without 60 days notice to the Commission. Features and procedures falling in this paragraph section may not be changed without prior Commission approval if the Commission, after having received the required notice, so orders.

(d) A construction authorization must be subject to the limitation that a license to receive and possess source, special nuclear, or byproduct material at the Yucca Mountain site geologic repository operations area may not be issued by the Commission until:

(1) DOE has updated its application, as specified at § 63.24; and

(2) The Commission has made the findings stated in § 63.41.